IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5788 of 1998

with

SPECIAL CIVIL APPLICATION No 5789 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NARENDRABHAI RAVJIBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5788 of 1998
MR CG SHARMA for Petitioner
NOTICE SERVED BY DS for Respondent No. 1, 2, 3

2. Special Civil ApplicationNo 5789 of 1998
MR CG SHARMA for Petitioner
NOTICE SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 18/04/2001

ORAL JUDGEMENT

1. The petitioner herein is aggrieved by orders passed by the Collector Surat in exercise of revisional powers under the Land Revenue Code cancelling a mutation entry made in favour of the petitioner in respect of the lands in question which were purchased by the petitioner in the year 1986. The revisional powers were exercised after a lapse of about 9 years and 10 months. It was held by the Collector that there is breach of the provision of Section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948 (Tenancy Act for short), as well as breach of Section 7 of the Bombay Prevention of Fragmentation Act, 1947, and therefore, the mutation entry in favour of the petitioners were ordered to be cancelled.

2. The undisputed facts in this petition are that the petitioner in Special Civil Application No. 5788/98, Shri.Narendra Ravjibhai Patel purchased Survey No. 403 and 404 of village Abhawa, Taluka Choryasi, District Surat by registered sale deeds on June 29, 1985. The effect to the same transactions was given in village Form No. 6 by entry No. 891 and 892 on March 12, 1986. The said entry came to be certified on July 15, 1986. Thereafter, on June 14, 1996, a notice was served on the petitioner by the Collector, Surat calling upon him to show-cause as to why the mutation entries No. 891 and 892 should not be cancelled, as the land was sold for non agricultural purpose and ultimately, the impugned order was passed by Collector cancelling the entry. The contention raised before the Collector by the petitioner was that it is a delayed action, that the land now falls within the residential zone prepared by Surat Urban Development Authority and therefore, there is no breach of provision of Section 63 of Tenancy Act. The Collector observed that there is nothing to indicate that the petitioner is an agriculturist. He also observed that there is violation of Section 7 of the Bombay Prevention of Fragmentation Act, and ultimately issued directions to cancel the entries.

3. In Special Civil Application No. 5789/1998 the petitioner - Bipinchandra Amratlal purchased Survey No. 405/1 and 405/2 and 406 of village Abhwa, Taluka

Choriyasi, District Surat by registered sale deed on June 6, 1985. Mutation entry No. 882,883, 884 and 885 were made in village Form No. 6 on March 10, 1986 and said entries were certified on April 15, 1986. The petitioner was served with show cause notice on February 26, 1996 calling upon him to show cause as to why these entries may not be cancelled on account of breach of provision of Section 63 of the Tenancy Act. Here also the contention raised by the petitioner before the learned Collector was that the action is delayed. The land falls under the residential zone in the plans prepared by Surat Urban Development Authority, and therefore, there is no breach of Section 63 of the Tenancy Act. The entry is properly certified and therefore notice may be discharged. Here the Collector observed that the transaction is in violation of Section 63 of the Tenancy Act. He also found that there is breach of Section 7 of the Bombay Prevention of Fragmentation Act and therefore ultimately directed to cancel entry No. 882, 883, 884 and 885. He also directed an action for violation of Section 7 of Bombay Prevention of Fragmentation Act and initiation of proceeding under Section 9 of the said Act by Deputy Collector, Choriyasi Prant, Surat.

4. Aggrieved by the said orders the petitioners have approached this Court. Mr. Sharma learned Advocate for petitioner contented that the action is taken after long lapse of almost 10 years. He has placed reliance on the decision of this Court rendered in Special Civil Application No. 7520/1996 on 06.02.1997 (Coram S.D. Dave,J.) as also on the decision rendered in the case of MAVJI DHORJI AND ORS. Vs STATE OF GUJARAT 1994 (1) G.L.H. 20. STATE OF PUNJAB AND ORS. Vs. GURDEVSINGH AND ASHOK KUMAR A.I.R. 1992 Supreme Court 111. Mr. Shrama also submitted that learned Collector has, while exercising powers under Land Revenue Code made certain observations about the breach of certain provision of Prevention of Fragmentation Act and has founded the conclusion on those observations to the some extent. This is done without holding any proceedings under Section 9 of said Act. He could not have exercised powers under Prevention of Fragmentation Act, while exercising powers under the Land Revenue Code. He has relied on decision in the case of EVERGREEN APARTMENT CO-OP. HOUSING SOCIETY VS. SPECIAL SECRETARY, REVENUE DEPARTMENT,1991 (1) G.L.R. 113. He submitted therefore that the petition may be allowed.

5. Mr. Poojari, learned Assistant Government Pleader has opposed this petition. He submitted that no action is taken in exercise of powers under the

Prevention of Fragmentation Act. The Collector has exercised powers only under the Land Revenue Code. He submitted that the observations regarding breach of provision of Section 7 of Bombay Prevention of Fragmentation Act have been made only on prima-facie basis to give support to the order cancelling the entry. He submitted that in the case of Bipinchandra Amratlal the Collector has given a direction for holding proceeding under the provision of Bombay Prevention of Fragmentation Act, and if ultimately it is found that there is no breach of such provision, then appropriate effect can be given in the record of right. He therefore urged that this petition may be dismissed.

6. Having regard to the contentions raised before this Court, this Court is required to address a question as to whether the Collector could have exercised revisional powers under the Land Revenue Code after a lapse of about 9 years and 10 months, and whether such order could have been founded on some observations made by the Collector, in respect of breach of Bombay Prevention of Fragmentation Act, in absence of any proceeding of provision of Section 9 of the said Act and whether the Collector could have issued direction for holding an enquiry under Section 9 of the Bombay Prevention of Fragmentation Act while exercising powers under the Land Revenue Code.

7. In this regard decision of EVERGREEN APARTMENT CO-OP HOUSING SOCIETY Vs. SPECIAL SECRETARY, REVENUE DEPARTMENT, GUJARAT STATE, 1991 (1) G.L.R. 113 may be profitably be referred to. In that case this Court observed " it is quite possible that an officer of the Revenue Department may be occupying different capacities under different enactments. That however, would not empower him to exercise any powers under one enactment while proceeding under another enactment. So far as the proceeding under Rule 108 of the Rules, popularly known as RTS proceedings, are concerned, it is well settled that the entries made in the revenue records have primarily a fiscal value and they do not create any title. Such mutations have to follow either documents of title or orders passed by Competent Authority under special enactments. Independently the Revenue Authorities, as mentioned in Rule 108 of the Rules, cannot pass orders of cancelling the entries on an assumption that the transaction recorded in the entry are against the provision of a particular enactment. Whether the transaction is valid or not has to be examined by the Competent Authority under the particular enactment by following the procedure prescribed therein and by giving

an opportunity of hearing to the concerned parties likely to be affected by any order that may be passed".

8. Thus the observations made by the Collector while passing the order impugned in Special Civil Application No. 5788/1998 is that there is breach of provision of Section 7 of Bombay Prevention of Fragmentation Act or giving direction while passing order impugned in Special Civil Application No. 5789/1998 for initiating the proceeding under Section 9 of the Bombay Prevention of Fragmentation Act while exercising powers under the Land Revenue Code cannot be or upheld.

9. The orders impugned also suffer from another defect of a gross delay of about 9 years and 10 months. In this regard this Court as in Special Civil Application No. 7520/1996 is relying on the decision in the case of STATE OF GUJARAT Vs.PATEL RAGHAV NATHA AND ORS. A.I.R.1969 Supreme Court 1297 and the decision held that revisional powers have to be exercised within reasonable time. What is reasonable time is also been decided by this Court in MAVJI DHORJI AND ORS. Vs. STATE OF GUJARAT AND ANOTHER 1994 (1) G.L.H.20 wherein it has been held that the powers for the purpose will have to be exercised within reasonable time, and reasonable period will be one year from the date of mutation entry being certified. Otherwise in case of belated action, authority exercising such powers will have to justify belated action. In that case the question was regarding the sale transaction of Agricultural land which took place clearly before two years and mutation entries were made in the records of rights accordingly. The Court held that there is a difference between the terms "void and invalid" transactions. The Court observed that scheme of the Act (i.e the Bombay Tenancy and Agricultural Land) makes a clear distinction between void transaction on one hand and invalid transaction on the other hand. The Court ultimately came to the conclusion that cancellation of mutation entries made on basis of purchase of land allegedly made in breach of provision of Section 63 of the Tenancy Act after a lapse of two years was not justified. It hardly needs to be noted that in the case before this Court the time gap is of 9 years and 10 months which is far-far longer than in the case of MAVJI DHORJI (Supra)

10. As against this contentions learned Additional Public Prosecutor Mr. Poojari has placed reliance on the decision of this Court as reported in KOLI NAGJIBHAI VARJAN Vs. STATE OF GUJARAT & ORS., 1992 (1) G.L.R. 14. The said decision holds that clearly the revisional

powers should be exercised within a reasonable time where no period of limitation is prescribed by law. However where the transaction is non-est, the Court cannot validate that transaction by invoking this principle. These observations were made by the Court in light of provision of Section 9 (1) of the Bombay Prevention of Fragmentation Act which specifically provides that transfer or partition of any land contrary to provision of the said act shall be void Mr. Poojari was at loss to point out any provision under the Tenancy Act which provides that a transaction in contravention of Section 63 of the Tenancy Act is 'void'. Apart from that, this Court, in the case of MAVJI DHORJI has held that there is difference between terms void and invalid used in the Bombay Tenancy and Agricultural Lands Act and also held that exercise of revisional powers and canceling of entries allegedly made in contravention of Section 63 of Bombay Tenancy Act were not justified. Powers could not have been exercised cancelling the entries and therefore the said decision relied upon by Mr. Pujara in the case of KOLI NAGJIBHAI VARJAN Vs. STATE OF GUJARAT, 1992 (1) G.L.H. 14. cannot be applied to the facts of the present case. Mr. Poojari relied upon the decision of the Apex Court in STATE OF ORISSA AND ORS. Vs. BRUNDABAN SHARMA AND ANOTHER, 1995 Supp (3) SUPREME COURT CASES 249 wherein the Apex Court has observed that where the is no period of limitation prescribed under the Act, the revisional powers can be exercised within a reasonable time, but the Court also observed that validity of non-est or void order can be questioned in any proceedings at any stage. In the instant case the entries made and duly certified cannot be considered as non-est. Orders in light of the decision of this Court in MAVJI DHORJI, and that being so, the said decision of the Apex Court cannot help the case of the respondents.

11. No other contention is raised, no other case law is cited.

12. The ultimate result therefore is that the action on the part of the Collector initiated after 9 years and 10 months cannot be upheld. The Collector could not have made any observations in respect of breach or non breach of provision of Bombay Prevention of Fragmentation Act in absence of any proceedings conducted by the Authority under the said Act nor could he have directed for intitating proceeding under Section 9 of the Bombay Prevention of Fragmentation Act. The action is grossly delayed and there is no justification for the delay found in passing the order and therefore the order cannot be permitted to stand. The petition deserves to be allowed

and the same is allowed. The orders in question is hereby quashed and set-aside. Entries made pursuant to the direction of the Collector are ordered to be removed and mutation entry no. 891 & 892 are ordered to be restored. Rule absolute. No costs.

(A.L. DAVE,J.)

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